

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	)	
	)	
Lifeline and Link Up Reform	)	WC Docket No. 11-42
And Modernization	)	
	)	
Lifeline and Link Up	)	WC Docket No. 03-109
	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
On Universal Service	)	
	)	
Advancing Broadband Availability	)	WC Docket No. 12-23
Through Digital Literacy Training	)	

**REPLY COMMENTS OF TRACFONE WIRELESS, INC. ON  
SUPPLEMENT TO PETITION FOR RECONSIDERATION  
AND EMERGENCY PETITION TO REQUIRE RETENTION  
OF PROGRAM-BASED ELIGIBILITY DOCUMENTATION**

TracFone Wireless, Inc. (“TracFone”), by its attorneys, hereby submits its reply comments in the above-captioned matter.

In its Supplement to Petition for Reconsideration (“Supplement”), TracFone requested that the Commission amend its recently-promulgated rules governing certification of program-based eligibility for Lifeline enrollment. Specifically, TracFone proposed that Eligible Telecommunications Carriers (“ETCs”) be required to retain for not less than three years copies of documents produced by Lifeline applicants to demonstrate their program-based eligibility. As explained in that Supplement, merely requiring ETCs to “review” documentation and to keep notes of what they have viewed will not prevent unscrupulous providers from falsifying such notes and will not enable either the Commission or the Universal Service Administrative Company (“USAC”) to audit ETCs’ compliance with the full certification requirement codified at Section

54.410(c)(1)(i)(B) of the Commission's rules. The obvious shortcomings of the current requirement were well-described by one supporter of TracFone's proposal -- Sprint Nextel Corporation -- as "toothless."<sup>1</sup>

Several parties filed comments in response to TracFone's supplement. All commenters except one concurred that the Commission's rule requiring Lifeline applicants to produce documentation of program-based eligibility (so-called "full certification") without a document retention requirement will not be sufficient to prevent waste, fraud and abuse of Universal Service Fund resources.<sup>2</sup> Only one commenter -- The Gila River Indian Community and Gila River Telecommunications, Inc. ("Gila River") -- opposed the document retention proposal.

Before addressing the other parties' comments, TracFone directs the Commission's attention to a paper authored by former Commissioner Deborah Taylor Tate and posted July 24, 2012 on the Free State Foundation's website. Commissioner Tate's article is entitled "FCC's Lifeline Reforms Should Keep Low-Income Consumers Connected." A copy of Commissioner Tate's timely and insightful paper is attached to these comments so that her observations and conclusions may be included in the record of this proceeding and so that the Commission may have available to it the benefit of Commissioner Tate's experience and judgment on Universal Service and Lifeline matters.

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<sup>1</sup> Comments of Sprint Nextel Corporation, filed July 24, 2012, at 2 ("... in the absence of a retention requirement for audit purposes, the documentation requirement is toothless as a means for ensuring that carriers enroll only customers who present proof of eligibility.").

<sup>2</sup> Comments in support of the Supplement include Sprint Nextel, Nexus Communications, Inc., I-Wireless, LLC, NTCH, Inc. and a coalition of current and prospective Lifeline providers who identify themselves as the Joint Commenters.

In her paper, Commissioner Tate criticizes the Commission's full certification requirement, noting that it will "likely have the unintended consequence of keeping otherwise eligible low-income consumers from subscribing to Lifeline." She further concludes that "full certification works at cross-purposes with what should be the future course for USF." With respect to TracFone's document retention proposal, Commissioner Tate agrees with TracFone's concern that the current rule creates an "honor system" for ETCs and concludes that "[w]ith only ETCs' say-so to go on, [USAC] would be unable to conduct inspections to ensure that ETCs are actually complying with full certification."

During her tenure on the Commission and subsequent thereto, Commissioner Tate has been a steadfast advocate for USF reforms which will achieve the goals of the USF-supported programs in an efficient manner. As a former Commissioner and former Chairman of the Federal-State Joint Board on Universal Service, Commissioner Tate's views on Lifeline issues, including full certification and the need for effective auditing of USF programs to ensure compliance, merit thorough consideration by the Commission.

Commissioner Tate's well-articulated concerns are shared by other commenters. For example, NTCH notes that so long as federal funds are available, some "unscrupulous operators will, either deliberately or through lack of oversight of their employees, bend the rules by going through the motions of verifying eligibility but doing so haphazardly, carelessly or even fraudulently."<sup>3</sup> It further observes that TracFone's

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<sup>3</sup> NTCH Comments at 2.



proposal will establish “an auditable trail of documentation that should serve to curb the opportunity for the unscrupulous to game the system.”<sup>4</sup>

As noted, only one commenter -- Gila River -- opposed TracFone’s Supplement. However, Gila River largely ignores the primary reason for mandatory document retention set forth in the Supplement. Gila River states that the proposed document retention requirement “would do nothing to increase telephone penetration rates, especially on tribal lands.”<sup>5</sup> That observation ignores a primary focus of the Commission’s Lifeline Reform Order.<sup>6</sup> While increasing telephone penetration, including penetration on tribal lands, has long been a goal of the Universal Service programs, including Lifeline, the Commission’s primary objective in the Lifeline Reform Order was to modernize the program and ensure that USF resources be used more efficiently by eliminating opportunities for waste, fraud and abuse. Nowhere in its comments does Gila River dispute that a document retention requirement will reduce waste, fraud and abuse of USF resources by eliminating the opportunity for ETCs to falsify records regarding their viewing of customer-provided program-based eligibility documentation or, at least, interpreting that requirement in self-serving, “creative” manners so as to maximize their receipt of USF support.

Gila River complains that TracFone did not provide any direct evidence that ETCs have fraudulently claimed to have viewed program-based eligibility

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<sup>4</sup> *Id.* See also Comments of I-Wireless at 4 (“ . . . requiring ETCs only to ‘review’ documentation of program-based eligibility but not to retain the documentation itself leaves open the opportunity for unscrupulous ETCs to cheat in order to receive Lifeline support from the USF to which they are not entitled.”)

<sup>5</sup> Gila River Comments at 4.

<sup>6</sup> Lifeline and Link Up Reform and Modernization, et al, FCC 12-11, released February 6, 2012 (“Lifeline Reform Order”).

documentation.<sup>7</sup> That is correct. However, that statement misses the point. The reason for a document retention requirement is not there have been proven occurrences of ETCs falsifying records of viewed documentation. The reason for the requirement is that the opportunity exists for ETCs to do so. Indeed, the Commission itself promulgated the full certification requirement without any evidence that there had been significant instances of fraudulent enrollment under the self-certification under penalty of perjury rule in effect in most states until June 1, 2012. The Commission adopted the full certification requirement (over opposition from TracFone and many others) based on its belief that self-certification creates an opportunity for unqualified customers to enroll in Lifeline. Just as recognition of the opportunity for consumers to obtain Lifeline benefits by means of fraud caused the Commission to promulgate the full certification requirement, so too, should recognition of the opportunity for ETCs to increase their Lifeline revenues by falsifying or distorting document retention viewing records warrant the establishment of a document retention requirement.

Gila River further complains that document retention will increase its administrative costs. That may be so. However, virtually every Lifeline reform rule promulgated by the Commission will increase ETCs' administrative costs. For example:

- 60 day non-usage de-enrollment will increase administrative costs;
- Requiring annual re-certification of all Lifeline customers rather than just a limited random sample will increase administrative costs;
- Requiring ETCs to provide additional notifications and obtain additional enrollment information will increase administrative costs;
- Full certification will increase administrative costs.

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<sup>7</sup> Gila River Comments at 5.

Each of these reforms (some of which TracFone opposed and continues to oppose; others of which it has supported) increase administrative costs. However, the Commission imposed those requirements because, in the Commission's judgment, they were deemed necessary to detect and prevent waste, fraud, and abuse of USF resources.

Gila River Telecommunications has done an admirable job of increasing telephone penetration and improving its network and the services available to the Gila River Indian Community. It deserves recognition for those efforts. Nonetheless, the Commission's Lifeline reform rules were promulgated for a reason. As described in TracFone's Supplement and corroborated by other parties' comments, requiring full certification without also requiring ETCs to retain and to make available to auditors the documents which they claim to have reviewed will not achieve the Commission's objective of reducing waste, fraud, and abuse.<sup>8</sup>

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<sup>8</sup> As a tribally-owned carrier serving a rural largely low-income tribal community with a high percentage of customers receiving Lifeline support, Gila River's circumstances may be sufficiently unique as to warrant waiver of a document retention requirement. Gila River would have the opportunity to request such a waiver if the Commission requires retention of program-based eligibility documentation as proposed in TracFone's Supplement.

## Conclusion

For the reasons set forth herein as well as those contained in the other parties' supporting comments and in Commissioner Tate's paper, TracFone respectfully reiterates its request that, if the Commission retains the full certification requirement set forth in its rules,<sup>9</sup> it should require all ETCs to retain for not less than three years copies of the documents provided to them by applicants for Lifeline service.

Dated: August 8, 2012

Respectfully submitted,

**TRACFONE WIRELESS, INC**



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<sup>9</sup> TracFone has petitioned the Commission for reconsideration of the full certification requirement. That reconsideration petition remains pending.



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# THE FREE STATE FOUNDATION

A Free Market Think Tank for Maryland.....Because Ideas Matter

Tuesday, July 24, 2012

## FCC's Lifeline Reforms Should Keep Low-Income Consumers Connected

by Deborah Taylor Tate

The FCC is [seeking public comment](#) on [TracFone's petition](#) requesting that the FCC adopt a three-year Lifeline document retention requirement. The requirement would be added to the FCC's "full certification" mandate for ensuring low-income consumer eligibility for voice services through Lifeline. Concerns have been raised that full certification would be an ineffective check on fraud, waste, or abuse absent retention of records for inspection.

But a deeper set of concerns already surrounds full certification. The FCC's mandate may do more to keep many otherwise eligible low-income consumers from receiving Lifeline service than it does to combat misuse and abuse. Implementing a record retention requirement, however necessary to administer full certification, would simply add compliance costs to the already problematic full certification mandate.

This overlooked aspect to implementing full certification raised by TracFone provides yet another reason for the FCC to rethink its approach. The FCC should rescind full certification in favor of a simpler approach that better ensures low-income consumers most in need obtain and retain service. Or at least the agency should opt for postponement until full certification can be better implemented using a nationwide database.

In its February 2012 [Lifeline Report & Order](#), the FCC adopted full certification as a measure to cut fraud, waste, and abuse in the Lifeline program. This essentially involves eligible telecommunications carriers (ETCs) corroborating a Lifeline subscriber's enrollment in other public assistance programs in order to qualify for Lifeline service. The FCC's *Report & Order* adopted a requirement that ETCs enrolling low-income consumers in the Lifeline program for voice services must access available state or federal social services databases to verify eligibility. Otherwise, ETCs must review would-be subscribers' documentation to verify their eligibility.

In [blog posts](#) from earlier this year, FSF President Randolph May and I explained why a full certification mandate for Lifeline eligibility will more likely



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result in otherwise eligible persons not signing up for service than in cutting waste, fraud, or abuse.

To briefly restate that case: Many states do not have accessible databases or workable arrangements in place with carriers to conduct such verification. In [May](#) and [June](#), the FCC granted several temporary waivers from its full certification mandate on account of the incapability of many states and ETCs to comply with the agency's mandate. And many low-income consumers do not possess the documentation or means of transmitting such documentation to ETCs in order to enroll in Lifeline. In states that have previously taken a full certification approach to Lifeline there is evidence that low-income consumers who are intended beneficiaries of the Lifeline program never complete the process. This has meant denial of enrollment or halted service even where consumers have disclosed their name, address, date of birth, and part of their social security number.

Full certification will likely have the unintended consequence of keeping otherwise eligible low-income consumers from subscribing to Lifeline. The harm would be felt most by those who should be the focus of any universal service program. To this extent, full certification works at cross-purposes with what should be the future course for USF.

Lifeline should be the model for the future of the USF program. By targeting subsidies directly to those in financial need, Lifeline offers a more efficient approach to ensuring universal service than other, indirect subsidies. This targeted approach should eventually replace the billions of dollars in the high-cost fund and other USF subsidies now distributed to carriers. After all, there is little accountability or way of ensuring that those indirect USF subsidies to carriers are actually keeping the price of voice services down.

And those USF subsidies hit consumers hard. USF subsidies are funded by so-called surcharges – functionally the same thing as taxes – that voice subscribers pay as a part of their monthly bills. The current USF surcharge or "tax" rate that consumers are now assessed on the long-distance portion of their monthly bills is [15.7%](#). Reforms for cutting fraud, waste, and abuse in the Lifeline program are important. But implementation of the FCC's November 2011 USF Reform *Order* and forthcoming USF contribution reforms should be the agency's priority when it comes to cutting universal service costs and spelling relief for taxpayers.

In its May 30 petition, TracFone points out why mandating eligible telecommunications carriers (ETCs) to provide full certification without retaining documents necessary to ascertain consumer eligibility makes little sense. Absent document retention, a Lifeline full certification mandate amounts to an honor system approach as to whether ETCs check consumer documentation to verify eligibility. With only ETCs' say-so to go on, the Universal Service Administrative Company (USAC) would be unable to conduct inspections to ensure that ETCs are actually complying with full certification.

From an administrative standpoint, postponing full certification until a document retention requirement is added would better ensure that full certification serves its intended purpose. But there is a downside. ETCs would

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face additional costs in retaining such documentation, ensuring that consumer privacy is maintained, and making such documentation accessible for subsequent inspection. Those additional costs may be necessary for a functioning full certification process. But they add to the cumulative case against a full certification mandate for Lifeline service eligibility.

The FCC also has before it an April [petition for reconsideration](#) of its full certification mandate. The agency should rescind that mandate. Instead, the FCC can simply require that ETCs establish the Lifeline eligibility of low-income consumers by checking name, address, date of birth, and the last four digits of the social security number. At the very least the FCC can postpone full certification until a national database can be established to allow for a more efficient and streamlined method for verifying Lifeline eligibility.

Posted by kbaker at [9:52 AM](#) 

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